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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File:

Office: Nebraska Service Center

Date:

06 NOV 2001

IN RE: Petitioner:

Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

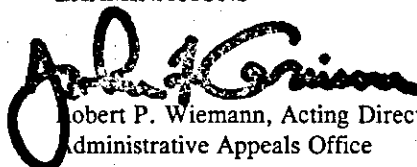
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a university-affiliated geological survey. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an assistant scientist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher. The director also found that the beneficiary lacks the required three years of qualifying research experience.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The above-cited Service regulation at 8 C.F.R. 204.5(i)(3)(i) lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied four of the criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

Dr. M. Lee Allison, director of the Kansas Geological Survey at the petitioning university, states that the beneficiary "was awarded the Sommerfeld Fellowship in 1993 by the Graduate Studies Committee, Department of Civil and Mineral Engineering, University of Minnesota, for his excellent academic record." The fellowship consisted essentially of paid tuition and financial support for the petitioner's research for the year beginning September 1993. There is no evidence that this fellowship is internationally acknowledged as a major prize, or even that fellowships of this kind are highly unusual among graduate students. The letter offering the beneficiary the fellowship states that the offer recognizes the beneficiary's "strong academic record." Strong academic performance does not constitute an "outstanding achievement" at a level approaching international recognition.

Dr. Allison adds that the beneficiary "is also the recipient of several other awards, including the Fitzpatrick Fellowship and the Zahm Travel Grant," but the record contains no documentation to support this claim or to establish that these are major prizes or awards.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

Dr. Allison notes that the beneficiary "has used his expertise to evaluate five articles and one book for several authoritative international journals." The journal Computers & Geosciences invited the beneficiary to review a book, Geostatistics: Modeling Spatial Uncertainty. We cannot ignore that the book review editor for the journal is a faculty member of the petitioning institution. Two other journals for which the beneficiary reviewed articles, Water Resources Research and Natural Resources Research, also have editorial ties to the petitioning institution. Some of these

letters are "form" letters with specific information, including the beneficiary's name, typed into blank spaces, suggesting that peer review of this kind is so routine that it necessitates a "form" letter, rather than being a relatively rare honor.

Of all the letters discussing the beneficiary's review of manuscripts, only one is from a source with no readily evident connection to the petitioner. This letter is from Dr. Dongxiao Zhang of Los Alamos National Laboratory, inviting the petitioner to review a paper for publication in "a collection of papers presented at Shlomo P. Neuman's 60th Birthday Symposium," which had already taken place several weeks before the date of Dr. Zhang's letter. We note that the salutation on the letter shows only the beneficiary's given name, rather than the more formal "Dr. [surname]."

In the letter, Dr. Zhang states "[i]f you are unable to review this manuscript," the beneficiary is welcome to "pass the package" on to "a colleague or someone in your research group." From this passage, it is evident that one need not pass any kind of strict screening process to judge a manuscript for this project.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is "unoriginal."

The petitioner submits four letters to fulfill this criterion. Dr. Stephen E. Silliman, associate professor at the University of Notre Dame, was the beneficiary's primary Ph.D. advisor. Dr. Silliman states:

[The beneficiary] has quickly proven himself a productive expert in the fields of groundwater modeling, aquifer characterization, subsurface flow and transport, and bioremediation. . . .

[The beneficiary's] research fills a critical need in terms of managing the water resources of the United States. Two general classes of groundwater models . . . are currently in wide use. The first, termed deterministic . . . is limited as it requires

more knowledge of the subsurface than will be available at any field site. The second, termed stochastic . . . is limited as it requires both large data sets and a series of restrictive assumptions which are not often met in our real systems. [The beneficiary's] work represents a unique and important contribution as it provides a means of linking these two types of modeling in a manner which both takes advantage of the strength of both types of models and is consistent with our ability to measure groundwater flow in the field. Particularly important for places where the groundwater resources are under severe stress, [the beneficiary's] research provides valuable tools for identifying the best management and protection policies.

Concurrent to his work on aquifer characterization, [the beneficiary] also performed extensive numerical modeling and lab experiments on water flow, chemical transport, and the movement of bacteria in groundwater systems. . . . This work has provided . . . significant new insight into the manner in which water, chemicals, bacteria, and the rocks which comprise the subsurface interact. This insight is critical to the development of new strategies for clean-up of existing groundwater contamination and protection of pristine groundwater supplies.

Professor Fu-Hsian Chang of Bemidji State University, who supervised the beneficiary in the early 1990s, states:

We had worked together on . . . EPA and MPCA funded projects of TCE (Trichloroethylene) bioremediation in groundwater aquifer for two years. [The beneficiary's] research results from this project have provided great insights into the mechanisms of TCE biodegradation in subsurface, and have significantly enhanced our abilities to design and optimize the TCE bioremediation in groundwater aquifer. . . .

His work on aquifer characterization greatly simplifies the conventional approach and provides tremendous savings on both data acquisition and monitoring network design. His work on well head protection zone delineation leads to an efficient tool for calculating the uncertainty involved and maximizing the potential of land-use for other economic activities. His work on chemical and microbial transport in groundwater aquifer presents to the academic world an unprecedented detailed data set on water flow, chemical transport and microbial movement in heterogeneous aquifer environment, which has the potential to revolutionize the existing groundwater modeling technologies.

Dr. James J. Butler, a senior scientist at the petitioning institution, states:

I believe that [the beneficiary] has the ability to make significant contributions in the area of groundwater hydrology

that will lead to improvements in the management of groundwater resources in Kansas. His work will also have significant ramifications for the management of groundwater resources throughout the United States. . . . I expect that his work . . . will receive ever-increasing attention in the future.

Dr. Robert W. Buddemeier, another senior scientist at the petitioning institution, states that the beneficiary "has been making significant contributions" to "an essential component of the High Plain Aquifer Evaluation Project." He continues:

His expertise in the combined areas of statistical analysis, computer modeling, and groundwater hydrology have been invaluable assets for the progress of this project. The innovative Local Gradient Estimate method he devised is of particular help to the analysis of spatial variation and uncertainty in water level measurements. . . .

[The beneficiary] has also been engaged in research on modeling bacteria and chemical movement in groundwater and on using geophysical techniques to characterize the aquifer, and has made significant contributions in these topics as well.

All of the above four witnesses have direct connections to the petitioner's past or present research work. Their letters, therefore, cannot constitute direct evidence that the beneficiary has earned recognition beyond the institutions where he has personally worked or studied. Because they are all in the United States, there is no evidence of recognition on an international scale. Many of the statements are couched in terms of the potential future impact that the beneficiary's work could one day have, and Dr. Butler states that he personally selected the beneficiary for several of the peer review assignments discussed above. We cannot conclude, on the basis of letters from the beneficiary's own professors and collaborators, that the beneficiary's work has earned him international recognition as an outstanding researcher.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Dr. Allison states that the beneficiary has written five articles in internationally circulated journals. The petitioner's original submission included only a list of articles, which is not evidence of the beneficiary's authorship or of the publication of the articles, nor does it establish the international circulation of the journals. Two of the five named articles had not even been published yet; the petitioner indicated that they were "to appear" in upcoming publications.

Apart from the above considerations, the record shows that the beneficiary received his Ph.D. on January 3, 1999, less than eight

months before the petition's August 26, 1999 filing date. Prior to January 1999, the beneficiary was a student for his entire adult life. The research experience which the petitioner claims for the beneficiary consists of five months of full-time experience at the University of Notre Dame, four years of half-time experience at Notre Dame, and 22 months as a half-time research assistant at Bemidji State University. Therefore, in order to meet the statutory and regulatory requirement of three years of experience, the petitioner must show that the beneficiary's student work has been recognized as outstanding.

The director concluded that the petitioner had not made such a showing, and denied the petition because the petitioner has not established that the beneficiary has earned international recognition as an outstanding researcher. That finding also necessarily extends to the finding that the beneficiary's student work has not been so recognized, and therefore the beneficiary has not met the requirement of three years of qualifying research experience.

On appeal, the petitioner maintains that the beneficiary "has done outstanding Ph.D. work, [and therefore] his research experience prior to receiving his Ph.D. should be acceptable." The petitioner submits various exhibits in an effort to establish the beneficiary's claimed international recognition.

The petitioner submits copies of several published articles by the beneficiary, some of which are among the five identified with the initial petition. All but two of these published articles show copyright dates of 2000, indicating that they had not yet been published in August 1999 when the petition was filed. Markings on one piece suggest that it is a proof copy of a not-yet published work.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." The petitioner has not demonstrated the degree of recognition which has resulted from the beneficiary's published work, for instance by establishing international citation of the articles.

Other documentation submitted on appeal also deals with the beneficiary's activities after August 1999. In Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), the Service held that

beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. A petitioner cannot prematurely file a petition, based on the expectation that the petitioner will eventually become eligible for the classification sought; and developments which take place after the filing date cannot retroactively establish that the beneficiary was already eligible as of the filing date.

The record contains no evidence to show that the beneficiary's work is viewed as especially significant outside the institutions in the U.S. where the beneficiary has worked or studied. Even the witnesses from those institutions appear to qualify their remarks, for example by speaking in terms of what is likely to result (but, by implication, has not yet resulted) from the beneficiary's work, or by discussing how the beneficiary's work is significant to a limited area, such as Kansas.

The petitioner's wider activities that are actually documented in the record appear to result from his association with established figures in the field, rather than from recognition of his own work. For example, his book review appeared in an international publication, the editorial board of which includes a professor at the petitioning institution. This has provided the beneficiary with some degree of exposure to the international research community, but we cannot conclude that exposure is synonymous with recognition as outstanding.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of geophysics. This conclusion necessarily implies that the beneficiary has not fulfilled the requirement of three years of qualifying research experience. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.